

ES 11711 5-011 8.c.

DIVISION OF HEALTH: A Deputy State Commissioner of Health has jurisdiction throughout the County, including the cities of said County, and the laws of this State do not provide for a Deputy State Commissioner of Health in incorporated cities of less than 75,000 inhabitants.

July 16, 1946



*7/12*

Dr. R. M. James, Director  
Division of Public Health and Welfare  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter requesting an opinion of this department, reading as follows:

"For quite a number of years this department has proceeded on the presumption that the Deputy State Health Officer for counties, who is an appointee of the local county court, had no jurisdiction within the incorporated limits of cities within that county, except in the small communities where no other means were available to accomplish protection of public health.

"We would like to have an opinion regarding the two following questions:

"1. The responsibility of the Deputy State Health Commissioner of the counties to the incorporated cities within that county?

"2. What is the method of appointment for Deputy State Health Commissioner in cities less than 75,000 in population?"

With reference to your first question, we direct your attention to Section 9747, R. S. Mo. 1939, which provides:

"It shall be the duty of the deputy state commissioners of health for the counties to enforce the rules and regulations of the state board of health throughout their respective counties outside of incorporated cities which maintain a health officer who has been appointed a deputy state commissioner of health as provided for in section 9745. The deputy state commissioners of health for incorporated cities of less than 75,000 population shall enforce the rules and regulations of the state board of health within their respective cities. Any deputy state commissioner of health who neglects or refuses to perform his duties as required by this article shall be deemed guilty of a misdemeanor. In case of dereliction of duty or refusal to act on the part of the deputy state commissioner of health of any county, the state board of health may at their discretion declare the office of deputy state commissioner of health for that county vacant."

Under this section the Deputy State Commissioner of Health has the duty to enforce the rules and regulations of the State Board of Health throughout the respective county of such deputy except in "incorporated cities which maintain a health officer who has been appointed a deputy state commissioner of health as provided in Section 9745." It seems clear to us, if a city does not have a deputy state commissioner of health then the Deputy State Commissioner of Health for the County not only has the power but also is required to enforce the rules and regulations of the State Board of Health in the city.

Section 9747, supra provides for the enforcement of the rules and regulations of the State Board of Health by a deputy state commissioner of health in cities of less than 75,000 population. It further refers to a deputy state commissioner of health as provided for in Section 9745, R. S. Mo. 1939. This section reads as follows:

"At the first regular February term of the county court in each county of the State after this article becomes effective and at the regular February term of said county court every year thereafter, said court may appoint a reputable physician, as a Deputy State commissioner of health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this law, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

It is noted that the above section provides only for a deputy state commissioner of health for counties and not for cities. Further, after a search of the sections from which this section was derived, back to 1909, when it was first found in the Laws of Missouri, we find that there never has been a provision for a deputy state commissioner of health of an incorporated city. Also, after a complete study of the statutes as of this time, we do not find any provision for the appointment of a deputy state commissioner of health for incorporated cities with less than 75,000 inhabitants.

In Meechem's, Public Officers, Section 501, it is stated that "the right to be a public officer then, or to exercise the powers and authority of a public officer, must find its source in some provision of the public law." Therefore, there would be no deputy state commissioner of health for incorporated cities below 75,000 population.

With this in mind then, under Section 9747, supra, the Deputy State Commissioner of Health for the County would also

Dr. R. M. James

(4)

have jurisdiction within the cities of his County.

Conclusion

Therefore, it is the opinion of this department that (1) the Deputy State Commissioner of Health of a County has the duty to enforce the rules and regulations of the State Board of Health throughout the County, including the incorporated cities; and (2) there is no provision in the Laws of Missouri for a Deputy State Commissioner of Health in incorporated cities of less than 75,000 inhabitants.

Respectfully submitted,

PERSHING WILSON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

PW:CP